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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,829	11/24/2003	Michael Barth Venturino	KCX-669 (19587)	4748
22827	7590	08/10/2005	EXAMINER	
DORITY & MANNING, P.A.			HILL, LAURA C	
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GREENVILLE, SC 29602-1449			3761	

DATE MAILED: 08/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/721,829

Applicant(s)

VENTURINO ET AL.

Examiner

Laura C. Hill

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-33 and 63-82 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-33 and 63-82 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/31/05</u> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Interpretation***

1. The term 'front portion' as recited in claim 1 is interpreted to be any area located within the garment-facing or body-facing surface of the absorbent article.

### ***Double Patenting***

2. The double patenting rejection of Claims 2, 6, 7, 12, 21, 23, 24, 25 and 32 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1, 3, 7, 49, 15 and 5; 16 and 52; 17 and 53; 54, and 1 and 43 of copending Application No. 10/721834 have been withdrawn upon further consideration.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

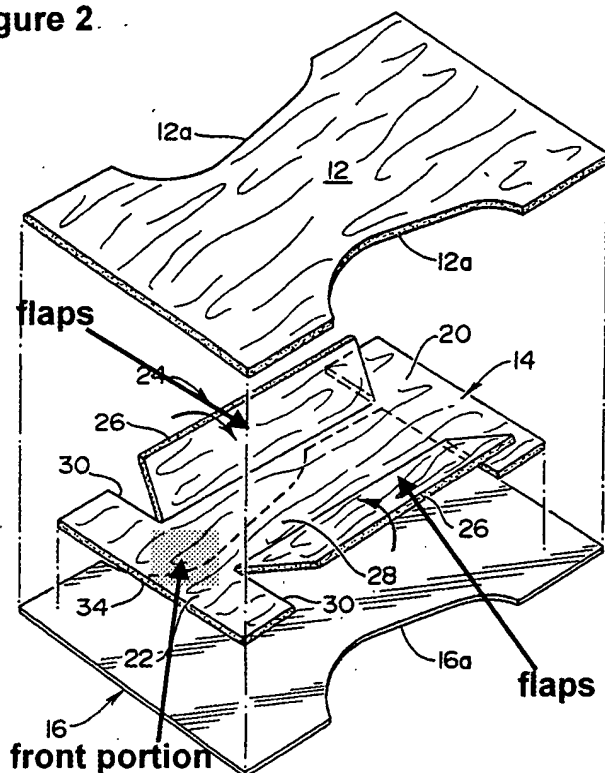
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 63-64 and 72-75 are rejected under 35 U.S.C. 102(b) as being anticipated by Mesek (US 4,960,477). Regarding claims 63-64 and 72 Mesek discloses absorbent disposable diaper 10 with a outer cover layer 16, facing layer/liner 12 and absorbent batt 14 sandwiched between these two layers; absorbent structure having a front, rear and middle portion with the middle portion being narrower than the front portion; a pair of opposing lateral side flap portions 26 extending substantially the entire length of the absorbent and connected to medial portion 28; side flap portions 26

defined by lines of cutting 30/first and second slits and side flap portions 26 being folded onto the front, middle and rear portions of absorbent diaper 10; each of the flaps in an unfolded state extending beyond the width of the front portion (col. 7, ll. 4-12, 30-32, 42-46 and fig. 2).

**Figure 2.**



Regarding claims 73-75 Mesek discloses an absorbent batt 14 of disposable diaper 10 with a densified paper-like skin containing a web interface with a quantity of superabsorbent material (col. 4, ll. 1-3, ll. 52-60). The web interface of the absorbent is capable of being air-formed since the Mesek reference discloses an absorbent batt with the same structure and since the process of making the web is given little patentable weight.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1-14, 16, 21-24, 32-33, 65-70 and 76-77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mesek (US 4,960,477). Regarding claims 1 and 21 Mesek discloses absorbent disposable diaper 10 with a outer cover layer 16, facing layer/liner 12 and absorbent batt 14 sandwiched between these two layers; absorbent structure having a front, rear and middle portion with the front portion having a width; a pair of lateral side flap portions 26 at opposite sides easily folded to overlap one another on a medial portion 28; and medial portion 28 having the substantially the same dimension of side flaps 26 and flaps when in an unfolded state extend beyond the width of the front portion (col. 7, ll. 4-12, 30-32, 42-46 and fig. 2). Mesek does not expressly disclose the flap width values claimed. The flap width value is a result-effective variable since the width can change depending on where the flap is cut. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Mesek with the flap width values claimed, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch and Slaney*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

Regarding claims 2-3 Mesek discloses absorbent batt 14 with relatively wide end portions 20, 22 connected by a relatively narrow central/middle portion 24 (col. 7, ll. 24-26).

Regarding claims 4-5 Mesek discloses side flap sections 26 of batt 14 that fold into an overlapping relationship with one another with compacted layers 26a, 26b and 28a to provide a reservoir for increased liquid storage capacity in the central or crotch region of the diaper with flap width percentages as discussed above with respect to claim 1 (col. 8, ll. 64-67 and col. 9, ll. 20-23).

Regarding claims 6-7 and 11 Mesek discloses absorbent diaper 10 with an hourglass-like shape wherein the lateral flaps 26 extend substantially and only a portion of the length of the absorbent structure with the flaps 26 folding onto the front, middle and rear portions (fig. 2).

Regarding claims 8-9 Mesek discloses absorbent batt 14 with relatively wide end portions 20, 22 connected by a relatively narrow central/middle portion 24 as discussed above with respect to claims 2-3.

Regarding claim 10 Mesek discloses lateral flaps 26 as discussed above with respect to claim 1. Mesek further discloses that the widest section is adjacent the middle portion of absorbent diaper 10 (figure 2).

Regarding claims 12-13 Mesek discloses absorbent diaper 10 with a longitudinal axis/side edge extending from the front to rear portion and side flap portions 26 defined by lines of cutting 30/first and second slits which are parallel to one another and are substantially perpendicular in a diagonal direction to the longitudinal axis and lateral flaps

being widest adjacent the middle portion as discussed above with respect claim 10 (col. 7, ll. 32-37 and fig. 2).

Regarding claims 14 and 16 Mesek discloses cutting lines 30/first and second slits may be disposed at an angle with respect to one another and with respect to the side edges of absorbent batt 14 and may be curved if desired (col. 7, ll. 37-40). Mesek does not expressly disclose the slits extending in a diagonal direction. One would be motivated to modify the slits so they extend in a diagonal direction since Mesek discloses an absorbent article with a cutting line/slit structure. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made that the slits be modified, thus providing slits that extend from a side edge/longitudinal axis in a diagonal direction or non-linear fashion.

Regarding claims 22-24 Mesek discloses the absorbent batt 14 of disposable diaper 10 with a densified paper-like skin containing a web interface with a quantity of superabsorbent material (col. 4, ll. 1-3, ll. 52-60). The web interface of the absorbent is capable of being air-formed since the Mesek reference discloses an absorbent batt with the same structure and since the process of making the web is given little patentable weight. If a prior art structure is capable of performing the intended use as recited in the preamble, then it meets the claim. See, e.g., *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997).

Regarding claims 32-33 Mesek discloses side flaps 26 are folded into an overlapping relationship with one another to provide an absorbent unit with three layers

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in the central region of absorbent diaper 10 for desired wicking and increased strength (col. 4, ll. 23-27).

Regarding claims 65-67 Mesek discloses side flap sections 26 of batt 14 that fold into an overlapping relationship with one another with compacted layers 26a, 26b and 28a to provide a reservoir for increased liquid storage capacity in the central or crotch region of the diaper as discussed above with respect to claims 4-5. Mesek further discloses the flap width percentages as discussed above with respect to claim 1.

Regarding claim 68 Mesek discloses absorbent diaper 10 with a longitudinal axis/side edge extending from the front to rear portion and side flap portions 26 defined by lines of cutting 30/first and second slits which are parallel to one another and are substantially perpendicular in a diagonal direction to the longitudinal axis and the lateral flaps being widest adjacent the middle portion as discussed in rejected claims 1 and 4-5 (col. 7, ll. 32-37 and fig. 2).

Regarding claim 69 Mesek discloses lateral flaps 26 as discussed above with respect to claim 1 and further discloses that the widest section is adjacent the middle portion of absorbent diaper 10 as discussed above with respect to claim 10.

Regarding claim 70 Mesek discloses absorbent diaper 10 having a rectangular shape in an unfolded state (fig. 1).

Regarding claim 76-77 Mesek discloses side flaps 26 are folded into an overlapping relationship with one another to provide an absorbent unit with three layers in the central and rear regions of absorbent diaper 10 for desired wicking and increased strength (col. 4, ll. 23-27). Mesek does not expressly disclose which portion the layers



are located in. One would be motivated to modify the side flaps of Mesek to be located in the claimed portions since the center area of the rear portion contains the absorbent.

Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made that to modify the side flaps of Mesek, thus providing a center area of the rear portion comprising at least two layers of material while the two opposing lateral areas of the rear portion comprise only a single layer of material.

5. Claims 15, 17-20, 25 and 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mesek (US 4,960,477) as applied to claims 1 and 63, and further in view of Endres et al. (US 5,527,302). Regarding claims 15 and 17-20 Mesek discloses the absorbent diaper 10 as discussed above with respect to claim 1 but does not expressly disclose a basis weight when the absorbent article is in an unfolded state. Endres et al. discloses absorbent diaper 10 with containment flaps 58 attached to upper surface of topsheet 26 (col. 3, ll. 66-67 and col. 7, ll. 29-31). Endres et al. further discloses each containment flap 58 comprises a single layer having a basis weight of about 0.4 ounces per square yard (col. 8, ll. 30-31). Endres et al. does not disclose if the basis weight is uniform in an unfolded state. One would be motivated to modify the basis weight to be uniform since Mesek and Endres et al. disclose side flaps that function to fold over the absorbent article to prevent side leakage. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the basis weight, thus making it uniform or non-uniform in the portions claimed.

Regarding claims 25 and 71 Mesek discloses the absorbent structure as discussed with respect to claims 1 and 63. Mesek does not expressly disclose basis

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weight. Endres et al. discloses absorbent structure 14 as discussed in rejected claim 15 which can contain surge and retention portions 98 and 100 with the retention portion 100 having a basis weight of 200-3000 gsm (col. 10, ll. 65-66 and 53-55). One would be motivated to modify the absorbent structure of Mesek with the basis weight of Endres et al. since both references have structures with lateral flaps discussed above with enhanced absorption characteristics. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the absorbent, thus providing an article with a basis weight with the values claimed.

6. Claims 26-31 and 78-82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mesek (US 4,960,477) as applied to claims 1 and 63, and further in view of Endres et al. (US 5,527,302), and further view of Carr et al. (US 5,462,537).

Regarding claims 26-31 Mesek discloses the absorbent diaper 10 as discussed above with respect to claim 1. Mesek does not expressly disclose a differential basis weight in the front, middle and rear portions when the absorbent article is in a folded state.

Endres et al. discloses absorbent structure 14 as discussed above with respect to claim 25 which can contain surge and retention portions 98 and 100 with the retention portion 100 having a basis weight of 200-3000 gsm. Endres et al. does not expressly disclose these basis weights being different in different portions. One would be motivated to modify the flaps of Mesek with the basis weight of Endres et al. since both references disclose absorbent articles with folding side flaps. Carr et al. discloses absorbent article 2 with target area 10 that may overlap/be folded onto crotch area 8 (col. 2, ll. 53-54).

Carr et al. further discloses central zone 18/middle portion has a higher average basis

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weight of absorbent material than end portions 4,6 and side portions 20 to rapidly absorb fluids (col. 3, ll. 21-23 and 49-50). Carr et al. further discloses because of an increasing capillary force resulting from increasing densities between central zone 18 and end portions 4,6 transfers liquid from the lower density to higher density area (col. 3, ll. 50-54). Carr et al. does not expressly disclose the value of this basis weight differential in the front and rear portions. One would be motivated to modify the lateral flaps of Mesek/Endres et al. with the differential basis weight of Carr et al. since the references disclose flaps on absorbent articles that enhance absorbent capacity through basis weight properties. Therefore, it would be obvious to one would be of ordinary skill in the art at the time the invention to modify the flaps of Mesek/Endres et al., thus providing different portions with differential basis weights having the ranges claimed.

Regarding claims 78-82 Mesek discloses the absorbent diaper 10 as discussed above with respect to claim 63 but does not expressly disclose a basis weight when the absorbent article is in an unfolded state. Endres et al. discloses absorbent diaper 10 having a basis weight of about 0.4 ounces per square yard as discussed in rejected claim 25 but does not disclose the basis weight value or uniformity in an unfolded state. One would be motivated to modify the flaps of Mesek with the basis weight of Endres et al. since both references disclose absorbent articles with folding side flaps. Carr et al. discloses differential basis weights in different portions of the absorbent article as discussed above with respect to claims 26-31. Carr et al. does not expressly specify if the differential basis weights are in an unfolded or folded state. One would be motivated to modify the flaps having basis weigh of Mesek/Endres et al. with the differential basis

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weight of Carr et al. since the references disclose absorbent articles with flaps having basis weights. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the basis weight, thus making it uniform or non-uniform.

### ***Response to Arguments***

7. Applicant's arguments, see page 11, filed 13 June 2005, with respect to claims 1-14, 16, 21-24, 32-33, 65-70 and 76-77 under 103(a) over Mesek (US 4,960,477) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection under 102b of the aforementioned claims is made in view of Mesek (US 4,960,477) as discussed above.

8. Applicant's arguments see page 10, filed 13 June 2005, with respect to claim 63 under 102b have been fully considered but they are not persuasive. The rejection of claims 63-64 and 72-75 under 102b by Mesek (US 4,960,477) is maintained as discussed above.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone

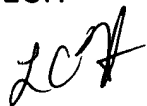
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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Laura C. Hill  
Examiner  
Art Unit 3761

LCH



TATYANA ZALUKAEVA  
PRIMARY EXAMINER

